

Meeting of: PERSONNEL COMMITTEE
Date: 9TH JUNE 2004
Report of: HEAD OF LEGAL SERVICES
Reference: HLS
Title: FORMER TOWN CLERK, – DISCRETIONARY COMPENSATION

PUBLIC/EXEMPT ITEM

This report is not for consideration in the public part of the meeting because it contains information about a former employee of the Council and the financial affairs of that employee, (paragraphs 1 and 7 of Schedule 12A to the Local Government Act 1972). In addition, at the meeting, further legal advice may be given orally, which would be exempt information under paragraph 12 of Schedule 12A.

PURPOSE OF THE REPORT

To enable the Committee to consider whether to exercise a discretion to grant added years to Mr. Pearson under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000.

RECOMMENDATIONS

1. That the Committee consider whether Mr. Pearson is a person to whom the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 apply because his employment as Town Clerk and/or Returning Officer terminated in the interests of the efficient exercise of the authority's functions, and if so
2. That the Committee consider whether it is appropriate to exercise the discretion to credit added years under Regulation 8 of the 2000 Regulations, and if so
3. That the Committee consider what number of years should be credited.

REPORT

Introduction

Members will recall that a report was submitted to Council on the 17th December 2003 concerning the pension of the former Town Clerk, Mr. William Pearson. A copy of the report, with its Appendices, is attached as Appendix 1 for ease of reference.

At the meeting on the 17th December 2003, the Council resolved that a Committee of Council be established with delegated authority to reach a decision on the first issue set out

in the report, that is, the lawfulness of the decision of Finance and Resources Policy Committee on the 6th April 1995 in respect of the early retirement of the former Town Clerk and that consideration of the further issues set out in the report be deferred until that Committee reported its decision to Council. Minute 108 refers.

The Town Clerk Pension Committee, comprising seven Members on PR, met on the 12th January and the 12th and 25th February 2004, and concluded that the 1995 decision was unlawful. This decision was reported to full Council at its meeting on the 17th March 2004, and Council resolved that the second issue as set out in the report of the 17th December 2003, namely the exercise of a fresh discretion to grant added years, be delegated to the Personnel Committee. Minute 153 refers.

Accordingly, it is that issue that now falls to be considered by the Committee at this meeting.

The Regulations

Notwithstanding that Mr. Pearson's employment terminated in 1995, the issue must now be considered under the current Regulations, which are the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 ("the 2000 Regulations").

The relevant provisions of the 2000 Regulations are as follows:

Regulation 4(1) provides that the Regulations apply in relation to a person-

(a) whose employment is terminated-

- (i) by reason of redundancy;
- (ii) in the interests of the efficient exercise of the authority's functions;

Mr. Pearson was not redundant, and the relevant clause of Regulation 4(a) is therefore (ii), the efficient exercise of the authority's functions.

Regulation 8(1) provides that an employing authority may award a credited period to an eligible person. It is accepted that Mr. Pearson is an "eligible person" for the purposes of Regulation 8(1).

Regulation 8(2) provides that the credited period may not exceed the shortest of certain specified periods. These are, the difference between the person's total membership and 40 years, the period beginning with the day after the termination date and ending on the person's 65th birthday, and 10 years, whichever is the shortest.

Regulation 8(3) provides that an award may not be made later than six months after the termination of the employment.

Mr. Pearson's employment terminated more than six months ago. However, the Council is entitled to make an award now, in accordance with the current law as set out in the judgment given by Mackay J. on the 15th February 2002 in the case of Eastbourne Borough Council - v- Foster. Mackay J. held that the provisions of Regulation 8(3) were not mandatory and that it was not a precondition that the discretion be exercised within six months of the termination of the employment.

Regulation 26 requires each local authority to formulate, publish and keep under review the policy it applies in the exercise of its discretionary powers under the Regulations. The

Council's current policy, which was amended by this Committee at its meeting on the 20th April 2004 is attached at Appendix 2.

The Recommended Approach

Counsel's advice has been sought as to how the Committee should approach its consideration of this issue, and the advice is that the exercise of the discretion should be considered in three stages as follows:

- (1) Is Mr. Pearson a person to whom the 2000 Regulations apply because his employment as Town Clerk or Returning Officer terminated in the interests of the efficient exercise of the authority's functions?
- (2) If so, is it appropriate to exercise the discretion to credit added years under regulation 8 of the 2000 Regulations?
- (3) If so, what number of added years should be credited?

In considering these issues, the Committee should take into account the submissions which have been made by Messrs. Pinsents on behalf of Mr. Pearson and the Association of Local Authority Chief Executives.

Submissions from Messrs. Pinsents were included at Appendices 2 and 6 to the report to Council of the 17th December 2003, which is at Appendix 1 to this report. In addition, Members have a further submission of the 10th March 2004 at Appendix 3 to this report, a copy of a letter of the 16th March with enclosure at Appendix 4, and a further letter of the 5th April 2004 at Appendix 5.

The First Question – Was Mr. Pearson's employment terminated in the efficient exercise of the authority's functions?

Counsel's advice is that the Committee should consider whether, in 1995 when Mr. Pearson's employment came to an end, the termination of the employment was in the interests of the efficient exercise of the authority's functions. In considering that question, his advice is that it is not appropriate to consider matters that have subsequently occurred in connection with the objections to the Council's accounts or the District Auditor's reports, or matters occurring after the termination of the employment.

The Committee should consider all the submissions made by or on behalf of Mr Pearson in so far as they relate to this issue.

Mr. Pearson held two posts with the Council – Town Clerk and Returning Officer. His main post was that of Town Clerk, and the Committee should consider this post first, and determine whether the employment as Town Clerk in 1995 was in the interests of the efficient exercise of the Council's functions.

Mr. Pearson's date of birth was the ~~1st January 1940~~. Accordingly, in 1995 he had his ~~55~~ birthday, and he had ~~55~~ years pensionable service in local government, of which ~~55~~ years had been at Lancaster. It is understood that at that time he was the longest serving Chief Executive in Lancashire.

In May 1995 the Council had its local elections, which meant that a "new" Council came into place for the next four years.

The Committee may take the view that in these circumstances the termination of Mr. Pearson's employment was in the interests of the efficient exercise of the Council's functions, as it enabled the new Council elected in May 1995 to appoint a new Chief Executive, with new ideas and new approaches, to take it forward over the next four years.

In considering the issue of efficiency, Members may wish to note that Mr. Pearson has stated in his submission (letter of 2nd March 2004 to his solicitor) that he felt that he "still had a lot to give and wanted to continue", and that a retirement at the age of 56 was not in his best financial interests. The implication is that if the retirement was not in his interest, it must have been in the Council's.

Members may also wish to consider the information available in the statements of those who participated in the 1995 decision as to the circumstances that existed at that time. However, the information available in those statements is limited and the only person who really addressed the question of efficiency was Mr. [REDACTED]

Members will also note that the District Auditor acknowledged in his Statement of Reasons that grounds existed on which the Policy Committee in 1995 could have concluded that the retirement of the Town Clerk was in the interests of the efficient exercise of the Council's functions.

If the Committee does now take the view that the termination of Mr. Pearson's employment as Town Clerk was in the interests of efficiency, it should then go on to consider whether it would have been realistic or feasible to continue to employ Mr. Pearson as Returning Officer if he ceased to be Town Clerk. Section 35 of the Representation of the People Act 1983 provides for every district council to appoint an officer of the council to be the returning officer for the elections of councillors to the district and an officer of the council to be the returning officer for elections of councillors of parishes within the district. In their letter of the 5th April 2004, Messrs. Pinsents submit that it would not promote the efficient exercise of the Council's functions for it to have a retired former officer being appointed as Returning Officer. In fact, this would not have been lawful. Counsel's advice is that, if in practice it was not possible to separate out the two posts, and if the Committee takes the view that it was in the interests of efficiency to terminate the employment as Town Clerk, then it would be permissible for the Committee to take the view that it was also in the interests of efficiency to terminate Mr. Pearson's employment as Returning Officer.

The Second Question – Is it appropriate to exercise the discretion to grant added years under Regulation 8 of the 2000 Regulations?

Counsel's advice is that this question should be considered by reference to relevant considerations as they exist at the present time.

The Committee should consider all the submissions made by or on behalf of Mr Pearson in so far as they relate to this issue.

The starting point is that the purpose of Regulation 8 is to empower a local authority to compensate a person for loss because his employment has been terminated in the interests of efficiency.

The Committee must have regard to the Council's current policy on the exercise of the discretion to grant added years. The Council's current Policy, approved by this Committee on the 20th April 2004, is attached at Appendix 2, and provides that the Council will exercise its discretion to its employees whose employment is terminated in accordance with the early retirement/voluntary redundancy scheme, and that it will negotiate in every individual case.

The current policy, like the previous one which it replaced, sets out the normal maximum number of years to be awarded given the length of service. The current policy, unlike the previous one, envisages that there will be negotiation between the individual and the Council on the number of years up to that maximum.

Clearly Mr. Pearson's case is different from the normal cases envisaged by the Council's current policy in one respect only. Normally, the negotiation would take place before the termination of the employment. However, in Mr. Pearson's case, the termination occurred in 1995, thus pre-dating the current Policy, and at that time the Council did grant additional years (~~1 year and 2 months~~ in respect of his employment as Town Clerk and ~~2 years and 6 months~~ in respect of his employment as Returning Officer). The submissions on behalf of Mr. Pearson request that the Council exercise its discretion to grant added years and that the added years be the same as those originally granted in 1995. Given that the termination has already taken place, and the Council is aware of what Mr. Pearson is requesting in terms of added years, the Committee may feel that the negotiation element of the current policy is inapplicable in this case. The rest of the policy will, however, apply.

In considering whether to exercise its discretion to grant added years, Counsel's advice is that the Committee is entitled to consider matters coming to light following the termination of the employment. The Committee is entitled to consider the fact that the District Auditor has been critical of Mr. Pearson's conduct in certain respects in that, in the District Auditor's view, he was careless or made errors of judgment or was guilty of misconduct in relation to certain aspects of the Crinkley Bottom Theme Park development. However, the Committee must also bear in mind that the District Auditor made no finding of wilful misconduct, and that a number of complaints about Mr. Pearson's conduct were not upheld by the District Auditor. The Committee should also have regard to the totality of the service that Mr. Pearson rendered to the Council, and the absence of any complaint or any suggestion of misconduct during that employment.

Counsel advises that the question for the Committee is whether, given that the purpose of the 2000 Regulations is to empower the Council to compensate for loss of office (when the termination of the employment is in the Council's interests) and given the Council's policy of exercising its discretion in such cases (subject to negotiation), the criticisms of Mr. Pearson's conduct (bearing in mind his entire employment history) provide a reason for not exercising the discretion now.

There are some reasons that would not be lawful. For example, it would not be lawful to refuse to exercise the discretion in Mr. Pearson's case as a means of punishing him or marking the Council's disapproval of any of his conduct in relation to the Crinkley Bottom matters.

The Committee must also be mindful that the purpose of the 2000 Regulations is to compensate for loss of office, and that the discretion cannot be exercised simply to reward a person for past service. That would not be a lawful reason for exercising the discretion.

The Committee will note the submissions on behalf of Mr. Pearson which urge the Council to exercise its discretion to grant added years. In particular the point is made in the letter of the 10th March 2004 that a retirement at the age of ~~60~~ was not in Mr. Pearson's best financial interest. The Committee may take the view that the discretion should be exercised in order to compensate for the financial loss resulting from the early termination of employment.

The Third Question – What number of years should be added

The number of years to be added may not exceed the statutory maxima as set out in Regulation 8(2). These are, the difference between the person's total membership and 40 years, or the period beginning with the day after the termination date and ending on the person's 65th birthday, or 10 years, whichever is the shortest.

In considering the number of added years to be granted, the Committee will need to bear in mind that the discretion is intended to compensate for loss of office.

The Committee must also have regard to the financial cost to the Council of granting added years.

The starting point in considering the number of added years to be awarded must be the Council's current policy (Appendix 2).

In relation to Mr Pearson's employment as Town Clerk, the maximum number of added years that he could be credited with under Regulation 8(2), (and which he was credited with in 1995) is [REDACTED], that is, the difference between his total membership and 40 years (ie taking him to his [REDACTED] birthday). That period of time is also the time that the current policy provides for. In practice, therefore, if the Committee decides to exercise its discretion in relation to the post of Town Clerk, that is likely to be the appropriate number of additional years to be credited under Regulation 8 of the 2000 Regulations, although the Committee has a discretion to depart from the policy if it considers that there is good reason to do so.

In relation to the employment as Returning Officer, under the current policy Mr Pearson would be credited with 4 years, taking him to a couple of months beyond his 60th birthday, (whereas, in 1995, he was credited with [REDACTED] to take him up to his [REDACTED] birthday). The maximum that the current policy contemplates by way of additional years is 6 and 2/3 years (for those with 25 years service). Mr Pearson had 15 years of service as Returning Officer.

Counsel advises that the question for the Committee is whether it wishes, for good reason, to depart from the policy and grant more added years in relation to the Returning Officer post than the policy provides for (e.g. either by granting 6 and 2/3, that is, the maximum currently contemplated by the policy, or going beyond 6 and 2/3 to the figure of [REDACTED] days). In considering that issue, the Committee may consider at what age it would be reasonable to assume Mr. Pearson would have expected to retire at. Also, the Committee will need to have regard to the likely difference in cost between crediting Mr Pearson with 4 years and any higher figure. The Committee will need to identify the reasons why it is appropriate for the Council to bear the higher cost of crediting 6 and 2/3 additional years or any longer period.

The financial costs to the Council of the various options are set out at Appendix 6.

The Committee should have regard to the interests of Mr Pearson, and any hardship or unfairness resulting to him from the fact that he was originally credited with in excess of 8 years and under the policy would receive only 6 and 2/3 years (for example, if he had entered into any commitments based on that amount). The actual impact on his gross pension payments is shown in the financial implications section and in Appendix 6. For information, the annual enhanced pension costs to the Council represent exactly the gross annual enhanced pension payments to Mr. Pearson.

The Committee should consider all the submissions made by or on behalf of Mr Pearson in so far as they relate to this issue.

As indicated above, the grant of additional years is subject to the principle that payments are intended to be compensation for the loss of office and that this compensatory principle can limit the amount of the award.

In the context of a one-off severance payment, it is easy to see that the compensatory principle means considering the amount that it would cost to remove the employee, e.g. considering the salary that would be paid during any notice period and the risk of a successful claim for unfair dismissal. However, Counsel takes the view that that is not an appropriate approach to the compensatory principle in the context of crediting added years of service. Rather, Counsel advises that the principle underlying the discretion in the 2000 Regulations is this. If an employee had remained in employment, he would have had the opportunity to build up extra years of reckonable service. By reason of the fact that he has ceased to hold office, he has lost that opportunity. If he would have been able given his age, for example, to build up 3 years of reckonable service, that is what he has lost and compensation in the form of 3 added years would not violate the compensatory principle. To pay him 10 years, however, would not be to compensate that employee for the loss suffered as a consequence of the loss of office. Whilst that amount may be within the statutory maximum, it would not reflect the compensatory principle and would be unlawful.

On that approach, the Committee would need to determine what Mr Pearson would have lost by reason of ceasing to hold office. Depending on the number of years of pensionable service that he could have built up if he had stayed in post until the retirement age, the Council could, in principle, consider awarding up to that number of added years without breaching the compensatory principle. In addition, the number of years cannot, in any event, exceed the statutory maxima. The period of ~~1 year and 223 days~~ for the post of Town Clerk and the period of 4 years (or indeed 6 and 2/3 years or ~~4 years and 203 days~~) for Returning Officer would fall within the compensatory principle as Counsel has analysed it. Accordingly, the Committee would not, in Counsel's opinion breach the compensatory principle whichever decision it took.

Effect of Awarding Added Years

On the termination of his employment in 1995, Mr. Pearson received a lump sum, and, until February 2003, he received enhanced periodic pension payments based on the decision of the Finance and Resources Policy Committee of the 6th April 1995 with regard to added years, which the Council has now found to be unlawful.

The legal advice previously reported to Council has been that there is no realistic or commercial prospect of recovering any payments made before February 2003.

In the event that the Committee now grants added years to Mr. Pearson, whether the same as in 1995 or different, the Committee may be minded to request the Lancashire County Council, as the administering pensions authority, to pay the enhanced element of pension payments with effect from February 2003, based on the added years now granted.

FINANCIAL IMPLICATIONS

The financial implications of various options are set out in Appendix 6 and can be summarised as follows. In view of the comments made earlier the options shown are considered to be the most obvious ones for Members to consider and allow comparison of costs across the full range, but they are not exhaustive.

Financial Consequences

| Employment / Added Years Options | Annual Pension Cost to the Council |
|--|------------------------------------|
| Chief Executive Employment | |
| 10 yrs 283 days (to 60 th birthday - original award - max) | £1,407 |
| | |
| | |
| Returning Officer Employment | |
| 4 yrs 283 days (to 60 th birthday) | £274 |
| 4 yrs 0 days (max under current policy, to beyond 60 th b/day) | £295 |
| 6 yrs 283 days (max allowable under current policy) | £491 |
| 8 yrs 283 days (to 65 th birthday - original award - max) | £643 |

If the Committee chooses not to award any added years, then there will be no pension cost implications to the Council.

In considering the financial implications of the various options, it has already been highlighted that Members must have regard to the likely difference in cost between crediting Mr Pearson with 4 years for his Returning Officer employment and any higher figure. The Committee would need to identify the reasons why it is appropriate for the Council to bear the higher cost, taking into account the amounts involved and the Council's financial position.

Should Members decide that added years should be granted, and assuming that the award is backdated until February last year (when his original payments were stopped), then the annual enhanced pension costs will be incurred from 2003/04 onwards. The amount to be charged into the last financial year would be slightly higher as it would cover more than a year (see Appendix 6). The funding arrangements would be reported to Cabinet but in essence, in view of the amounts involved, it is anticipated that costs in 2003/04 would be absorbed within the overall underspending anticipated for the year. For current and future years, it is reasonable to assume that the existing budget for annual pension enhancements (£420,000 for 2004/05) will meet any annual enhancements awarded to Mr Pearson.

Other Financial Information

In normal circumstances under the policy, financial implications relating to lump sums, the Pension Fund strain and payback periods would be presented to Members for consideration. In this case, only the annual pension enhancement will be directly affected by the decision and therefore these other elements have been partly disregarded. For completeness, however, and in order to provide full information about the costs to the Council, summary information is provided in the table below:

| Employment / Added Years Options | Lump Sum Entitlement | Estimated Pension Fund Strain |
|--|----------------------|-------------------------------|
| Chief Executive Employment | | |
| 10 yrs 283 days (to 60 th birthday - original award - max) | £4,220 | £78,045 |
| | | |
| | | |
| Returning Officer Employment | | |
| 4 yrs 283 days (to 60 th birthday) | £823 | £4,946 |

| | | |
|---|--------|--------|
| 4 yrs 0 days (max under current policy, to beyond 60 th b/day) | £885 | £4,946 |
| 6 yrs 242 days (max allowable under current policy) | £1,474 | £4,946 |
| 8 yrs 257 days (to 65 th birthday - original award - max) | £1,928 | £4,946 |

With regard to lump sums, Mr Pearson has already been paid the maximum lump sum and so there will be no extra costs arising. Should Members award a lower number of added years than that granted in 1995, there would be no impact on his lump sum payment. This is because as referred to earlier in the report, there is no realistic or commercial prospect of recovering any overpayment.

Generally a strain on the Pension Fund arises because when an individual retires early, they do not make as many years' contributions as assumed, and also they draw their pension earlier than expected. With regard to the Pension Fund strain costs shown above, these have already been reflected in the employer superannuation rates payable by the Council in recent years. This means that the Council has already met these costs and therefore there will be no other financial consequences from the Committee's decision.

In terms of payback, the Committee will be aware that following the early retirement of Mr Pearson, a new Chief Executive was appointed on similar terms; there would be no clear financial benefits in terms of granting this early retirement. Any efficiency grounds would therefore need to be based on the information contained earlier in this report, in considering 'the first question'.

LEGAL IMPLICATIONS

The legal advice is incorporated in the report, which has been prepared by the Head of Legal Services in conjunction with Counsel.

COMMUNITY SAFETY IMPLICATIONS

None

HUMAN RIGHTS ACT IMPLICATIONS

The Committee in exercising the delegated functions of the Council, as a public authority, has to act compatibly with European Convention rights. In particular reference has been made in Messrs. Pinsents' submissions to rights under Article 8 European Convention on Human Rights (ECHR) and Article 1 of the First Protocol.

The decision that the Committee is taking is whether or not to exercise a discretion under the 2000 Regulations to grant additional years of service for pension purposes. A decision to exercise, or not exercise, that discretion or to fix the number of years at a lower number than the number previously granted to Mr Pearson in 1995, would not, in Counsel's opinion, constitute an interference within the meaning of Article 8(1) which guarantees respect for private and family life, home and correspondence. Even if there were an interference within the meaning of Article 8(1), such an interference would be justified under Article 8(2) ECHR as being in accordance with law and necessary for the economic well-being of the country. The decision would be based on the statutory provisions governing the circumstances in which local authorities may legitimately make payments out of public money to individuals.

Article 1 of the First Protocol guarantees the right to peaceful enjoyment of existing possessions. It does not confer a right to acquire possessions. The exercise, or non exercise of a discretion to grant additional years, or the fixing of a particular number of additional years, for the purpose of providing a pension greater than a person would otherwise be

entitled to, does not involve a deprivation of property, or a control of use, or otherwise an interference with possessions within the meaning of Article 1 of the First Protocol. It concerns the acquisition as a matter of discretion of future rights not an interference with existing possession. Even if it did affect possessions, and providing the decision of the Committee were lawful under domestic law, such a decision would be justified. The purpose of the 2000 Regulations, and the common law principles governing the exercise of the discretion, is to ensure the proper use of public money. That is a legitimate purpose and decisions validly taken in the exercise of the functions conferred by the 2000 Regulations would, in Counsel's opinion, be reasonable and proportionate. Further, it is relevant in considering justification to bear in mind that the pension payable to Mr Pearson by reason of his actual years of service will be unaffected by the decision that the Committee is taking under the 2000 Regulations.

The question of Article 6 and the right to a fair and public hearing of disputes affecting civil rights has been raised in the past in this matter, in relation to the determination of whether the 1995 decision was lawful. It is debatable whether an exercise of discretion under Regulation 8 of the 2000 Regulations involves the determination of a civil right but in Counsel's opinion it does not, and Article 6 is not relevant to the exercise of discretion by the Committee under Regulation 8 of the 2000 Regulation. If the exercise of discretion did involve a determination of civil rights within the meaning of Article 6, the Council would not be an independent tribunal for the purposes of determining that issue and does not operate by way of a hearing (although, of course, Mr Pearson has been given every opportunity to make submissions and the Committee will record its decisions in its minutes which are publicly available). However, in considering whether or not there is any breach of Article 6, the courts have to consider whether the combination of the procedures available and any subsequent court procedures, are sufficient to meet the requirements of Article 6. Here, the decision of the Committee would be subject to judicial review. That would be sufficient, in Counsel's opinion, to ensure that there was a fair hearing before an independent tribunal.

RACIAL EQUALITY AND EQUAL OPPORTUNITIES IMPLICATIONS

None

SUSTAINABILITY IMPLICATIONS

None

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments to add.

SECTION 151 OFFICER'S COMMENTS

The S151 officer has been consulted and has no further comments to add.

BACKGROUND PAPERS

The background papers are exempt.

Meeting of: PERSONNEL COMMITTEE
Date: 1ST SEPTEMBER 2004
Report of: HEAD OF LEGAL SERVICES
Reference: HLS
Title: FORMER TOWN CLERK, – DISCRETIONARY
COMPENSATION

PUBLIC/EXEMPT ITEM

This report is not for consideration in the public part of the meeting because it contains information about a former employee of the Council and the financial affairs of that employee, (paragraphs 1 and 7 of Schedule 12A to the Local Government Act 1972). In addition, at the meeting, further legal advice may be given orally, which would be exempt information under paragraph 12 of Schedule 12A.

PURPOSE OF THE REPORT

To enable the Committee to consider whether to exercise a discretion to grant added years to Mr. Pearson under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000.

RECOMMENDATIONS

1. That the Committee consider whether Mr. Pearson is a person to whom the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 apply because his employment as Town Clerk and/or Returning Officer terminated in the interests of the efficient exercise of the authority's functions, and if so
2. That the Committee consider whether it is appropriate to exercise the discretion to credit added years under Regulation 8 of the 2000 Regulations, and if so
3. That the Committee consider what number of years should be credited.

REPORT

Introduction

Members will recall that this matter was previously before the Committee on the 9th June 2004, and Members are asked to bring with them the documentation circulated in advance of that meeting.

Members will recall also that at the meeting on the 9th June, it was reported that a letter from the District Auditor had been received the previous evening. That letter was circulated at the meeting, and a further copy is attached as Appendix 1 to this report.

In the light of this letter, the Committee resolved that the legal advisers to both the District Auditor and the former Town Clerk be invited to meet with the Council's legal advisers as soon as possible to discuss the issues raised in connection with consideration of discretionary compensation, and that further consideration of the matter be deferred to the 1st September 2004 to allow for proper consideration of the District Auditor's submission and for the meeting to take place.

Prior to the meeting, Messrs. Pinsents were asked to comment in writing on the District Auditor's letter of the 8th June 2004, and their letter of the 6th August 2004 is attached as Appendix 2.

The meeting took place on the 10th August 2004. The Council was represented by its Counsel, Mr. Clive Lewis, and by the Head of Legal Services. The District Auditor, Mr. Clive Portman, attended with Mr. Tony Child, solicitor. Mr. Peter Bounds represented ALACE.

A summary of the matters discussed at the meeting is set out below, and is intended to assist Members in their consideration of the three questions set out in the report of the 9th June 2004.

Points of Discussion at the Meeting

Mr. Pearson's employment as Town Clerk

It was agreed by all that it would be open to the Committee to conclude that Mr. Pearson's employment as Town Clerk terminated in the interests of the efficient exercise of the Council's functions; this is a matter on which the Committee must exercise its discretion.

In going on to consider whether to grant added years, and, if so, how many, the Committee should take account of all the relevant factors, starting with the current policy, and also including the service given by Mr. Pearson over the length of his whole employment with the Council, as well as in relation to Crinkley Bottom. The Committee should also take account of the Council's current Policy.

Mr. Pearson's employment as Returning Officer

It was agreed that for the purpose of the Pension Regulations, employment as Returning Officer had to be treated as if it were with a different employer. However, this did not necessarily apply to the compensation provisions.

The statutory provisions relating to the appointment of the Returning Officer are complex, and different provisions apply in respect of different types of election – European, parliamentary, and local. It is a function of the Council to appoint an Electoral Registration Officer, who by reason of that appointment is the Returning Officer for certain elections. That appointment was held by Mr. Pearson.

There was a lengthy discussion on this point, but Counsel's advice remains that it would be open to the Committee to take the view that it would not be in the interests of the efficiency of the Council's functions to have as Electoral Registration Officer/Returning Officer, an officer whose main employment with the Council was terminating. It seems unlikely that this view would be challenged by the District Auditor.

If the Committee took the view that the termination of Mr. Pearson's employment as Returning Officer was in the interests of the efficient exercise of the Council's functions, it would then need to consider whether to grant additional years, and, if so, how many. The starting point should be the Council's current Policy.

The view of the District Auditor is that he can see no justification for granting more added years than provided for in the Council's current policy, that is, in respect of Mr. Pearson's employment as Returning Officer, four added years.

ALACE's position, as expressed by Mr. Bounds at the meeting, is that, notwithstanding the current Policy, the Committee has a discretion to grant added years up to the statutory maximum, and that it should exercise that discretion to put Mr. Pearson in the same position as when the decision to allow early retirement was made in 1995. This is on the basis that the Council should "play fair" with its employees and not renege on the arrangements that it makes with them, letting down an employee who has been retired for a number of years. In stating his position, Mr. Bounds emphasised the importance of staff relations and the Council's reputation.

The legal difficulty with Mr. Bounds' approach is that, if followed, it would in effect reinstate the Council's unlawful decision of April 1995. Having considered the views of Mr. Child and Mr. Bounds at the meeting, Counsel's advice is that it would not be lawful for the Council to depart from its current Policy simply on the basis that it is necessary to do so to restore the (unlawful) 1995 position.

Should the Council grant more than four added years on this basis, then such decision would be likely to be challenged by the District Auditor.

Effect of Awarding Added Years

Mr. Pearson's enhanced payments were stopped in February 2003.

There was some discussion at the meeting as to how to implement any decision by the Committee now to grant added years. It was agreed that the most appropriate approach would be to backdate any decision to grant added years to September 1995 (but bearing in mind that Mr. Pearson must give credit for payments already made).

This would mean in effect that for the period from September 1995 to February 2003, during which enhanced payments were made to Mr. Pearson under the (unlawful) decision of April 1995, no further payments would be due to Mr. Pearson because entitlement under the new decision would be offset against payments already made. The Council has already accepted that it would not be commercially viable to recover any overpayments in the event that fewer added years are now awarded, thus reducing the entitlement.

For the period from February 2003, payments would be made in accordance with the new decision.

Conclusion

The above were the matters discussed at the meeting, and which clarify issues raised in the report prepared for the 9th June meeting, and in the District Auditor's letter of the 8th June.

At the end of the meeting, it was agreed that both ALACE and the District Auditor should submit further written statements of their position, and these are attached as Appendices 3 and 4 respectively.

The Committee is now asked to consider the relevant questions as set out in the report of the 9th June 2004.

FINANCIAL IMPLICATIONS

The financial implications are as set out in the report of the 9th June 2004.

LEGAL IMPLICATIONS

The legal advice is incorporated in the report, which has been prepared by the Head of Legal Services in conjunction with Counsel.

COMMUNITY SAFETY IMPLICATIONS

None

HUMAN RIGHTS ACT IMPLICATIONS

The human rights implications are as set out in the report of the 9th June 2004.

SUSTAINABILITY IMPLICATIONS

None

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments to add.

SECTION 151 OFFICER'S COMMENTS

The S151 officer has been consulted and has no further comments to add.

BACKGROUND PAPERS

The background papers are exempt.

EXEMPT MINUTES PURSUANT TO SECTION 100C(1) AND (2) OF THE LOCAL GOVERNMENT ACT 1972

24 FORMER TOWN CLERK, DISCRETIONARY COMPENSATION

Further to Minute No. 4, the Head of Legal Services submitted a report which supplemented the previous report and documentation presented at the meeting of 9th June 2004.

The report summarised discussions held on 10th August in accordance with Minute No. 4(1) and also included the further written statements which it had been agreed would be submitted by both parties.

The Committee was reminded that it was being asked to consider whether the termination in 1995 of the former Town Clerk's employment as Town Clerk and Returning Officer was in the interests of the efficient exercise of the Council's functions, and, if so, whether to exercise a discretion to grant added years under the Local Government (Early Termination)(Discretionary Compensation)(England and Wales) Regulations 2000.

The Chairman advised that he intended to consider each aspect of the former officer's employment separately.

The Committee therefore first discussed the issues relating to the employment of the former officer as Town Clerk and considered the matter in three stages, reaching a conclusion initially on whether the termination of employment was in the interests of the efficient exercise of the Council's functions. Members then proceeded to consider whether it was appropriate to exercise discretion to grant added years under Regulation 8 of the 2000 regulations and if so what number of years should be added.

Members took particular account of the evidence before them and asked a number of questions relating to the Regulations, the Council's current policy and the financial implications of a range of options under consideration.

Having reached a decision on the employment as Town Clerk the Committee applied the same process to consideration of the matter relating to the employment as Returning Officer.

On each question following a lengthy discussion the proposition was moved, seconded and unanimously agreed.

Resolved:

- (1) That the Committee considers that the termination of the employment of Mr. William Pearson as Town Clerk in 1995 was in the interests of the efficient exercise of the authority's functions. In reaching this conclusion, the Committee noted that Mr. Pearson had held the post of Town Clerk for a considerable number of years and indeed was the longest serving Chief Executive in Lancashire. The Committee took the view that it was in the interests of the efficiency of the Council to allow the then newly elected Council to appoint a new Chief Executive with new ideas and approaches to take the Council forward particularly in the wider context of change in local government. Accordingly, the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 applied to Mr. Pearson.

- (2) That, the Committee considers that it is appropriate in the case of Mr. Pearson's employment as Town Clerk to exercise the discretion to credit added years under Regulation 8 of the 2000 Regulations in order to provide compensation for loss as a result of the termination of his employment. Having considered the Council's current policy on the exercise of the discretion to award added years, the service given by Mr. Pearson to the Council over the whole length of his employment, and the financial implications for the Council as set out in Appendix 6 to the report of the 9th June 2004, the Committee considered that it was appropriate to exercise its discretion by awarding added years of ~~267 days~~ being the maximum permitted under the Regulations.
- (3) That the Committee considers that the termination of the employment of Mr. Pearson as Returning Officer in 1995 was in the interests of the efficient exercise of the Council's functions. In reaching this conclusion, the Committee took the view that it would not be an efficient exercise of its functions for the Council to have as Electoral Registration Officer/Returning Officer an officer whose main employment with the Council had terminated. Accordingly, the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 applied in respect of Mr. Pearson's employment as Returning Officer.
- (4) That the Committee considers that it is appropriate in the case of Mr. Pearson's employment as Returning Officer to exercise the discretion to credit added years under Regulation 8 of the 2000 Regulations, in order to provide compensation for loss as a result of the termination of the employment. Having considered the Council's current policy on the exercise of the discretion to grant added years, the service given by Mr. Pearson as Returning Officer, and the financial implications to the Council as set out in Appendix 6 to the report of the 9th June 2004, the Committee considered that it was appropriate to grant added years as compensation.
- (5) That the above decisions be backdated to September 1995 but that it be noted that no payments would be due to Mr. Pearson for the period between September 1995 and February 2003, as Mr. Pearson would be required to give credit for payments already made. It was further noted that the Council would not seek repayment of any overpayments.

.....
Chairman

(The meeting ended at 12.05pm)

**Any queries regarding these Minutes, please contact
Gillian Noall, Head of Administration Services,
on 01524 582060 or e-mail gnoall@lancaster.gov.uk**

I confirm acceptance of the above minutes (public and exempt) as a true record of the meeting of the Personnel Committee at 10am on 1st September 2004

Signed

Dated